

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

BURTON J. REINER
Respondent

Case No.: I-02-72031

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (72031) served April 2, 2002, the Government charged Respondent Burton J. Reiner with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that the violation occurred on April 1, 2002 at 1428 Euclid Street, N.W., and sought a fine of \$1,000.

On March 11, 2002, Respondent, through his management company, filed a timely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of any fines. Respondent explained that that on the date of the violation, his trash hauler, BFI, failed to make a scheduled pick-up. Respondent stated that the missed pick-up was corrected as of April 5, 2002. Respondent also included with his

explanation a copy of a fax cover sheet to BFI stating, “We hold you responsible for this [Notice of Infraction (72031)] as you failed to pick-up the trash as scheduled.”

By order dated May 2, 2002, I permitted the Government to respond to Respondent’s plea and request. The Government opposed Respondent’s request on the ground the Respondent “should be held accountable” for the violation.

II. Findings of Fact

1. By his plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 on April 1, 2002 at 1428 Euclid Street, N.W.
2. On April 1, 2002, Respondent failed to properly store and containerize solid wastes at 1428 Euclid Street, N.W.
3. Respondent’s trash hauler, BFI, failed to make a scheduled pick-up on the day of the admitted violation. Respondent corrected the admitted violation by April 5, 2002.
4. There is no evidence in the record of a prior history of non-compliance on the part of Respondent.

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on April 1, 2002. A fine of \$1,000 is authorized for a first violation of this regulation.² 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).
2. Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate. Respondent's explanation that his violation occurred as a result of a missed pick-up by his trash hauler is unavailing because a property owner is strictly liable for a violation of § 700.3.³ *Accord DOH v. New Deanville, L.L.C. a/k/a New 3145 Deauville, L.L.C.*, OAH No. I-00-70350 at 4 (Final Order, February 1, 2002); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995). In light of Respondent's prompt efforts to correct the violation and the lack of evidence in the record of a past history of non-compliance by Respondent, I will reduce the fine to \$700. *See* D.C. Official Code §§ 2-1801.02(a)(2) and 2-1801.03(a)(6); 18 U.S.C. § 3553.

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

³ Whether, in light of this strict liability, it may be appropriate for a property owner to seek indemnification or contribution from another party is not a matter for this administrative court to decide.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the amount of **SEVEN HUNDRED DOLLARS (\$700)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge